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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/834,875	04/13/2001	Harold Norbert Heller	29565/KC15,490	5544

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EXAMINER

KIDWELL, MICHELE M

ART UNIT PAPER NUMBER

3761

16

DATE MAILED: 04/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/834,875

Applicant(s)

HELLER ET AL.

Examiner

Michele Kidwell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 January 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 41-47 and 49-52 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 41-47 and 49-52 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 16.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

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DETAILED ACTION

Election/Restrictions

This application contains claims 1 – 33 and 38 – 40 drawn to an invention nonelected with traverse in Paper No. 6. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 41 – 47 and 49 – 52 are rejected under 35 U.S.C. 102(e) as being anticipated by Elsberg et al. (US 6,524,293).

With reference to claim 41, Elsberg et al. (hereinafter Elsberg) discloses a personal care absorbent article comprising a front portion including opposing first and second lateral side portions defining respective first and second lateral side edges (figure 7), and a central section defining a fastening area between the first and second lateral side portion (66), first and second fault lines (80) being disposed between the

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fastening area and the respective first and second lateral side portions (figure 7), a rear portion including an outer rear edge (72), the first and second fault lines being configured for activation to selectively release the front portion from the rear portion for use of the personal care absorbent article as a diaper-like article, or to remain intact for use of the personal care absorbent article as a pant-like structure (col. 18, lines 42 – 47) a crotch portion extending between the front portion and the rear portion (figure 7) and first and second fasteners releasably secured to the fastening area (col. 18, lines 19 – 22) and non-releasably secured to the first and second lateral side portions of the front portion as set forth in col. 19, lines 26 – 29.

As to claim 42, Elsberg discloses a personal care article wherein the fault lines are cut lines having no front portion material extending across the fault lines as set forth in col. 19, lines 1 – 25.

With reference to claims 43 and 50 – 52, Elsberg discloses the fault lines as lines of perforations, which may be considered as an array of apertures, material crushed in a line pattern or material that is breakably attached, as set forth in col. 19, lines 1 – 15.

With respect to claim 44, Elsberg discloses the fasteners comprising hook-type fasteners engageable with loop material at the fastening area as set forth in col. 19, lines 35 – 42.

Regarding claim 45, Elsberg discloses the first and second fasteners providing at least partial support of integrity of the front portion across the fault lines as set forth in col. 18, lines 54 – 67.

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With reference to claim 46, Elsberg discloses a fastening area that comprises a separate and distinct patch of fastening material affixed to an underlying web as set forth in col. 17, lines 12 – 15.

As to claim 47, Elsberg discloses a fastening area that is integral with a front surface of the central section of the front portion as set forth in col. 16, lines 64 – 67.

As to claim 49, see the rejection of claim 48. The floating portions shown in figure 7 can be considered to be disposed inwardly of the fault lines in the area just below the fault line and this area is also considered as being positioned inward toward a central portion of the front portion, and as noted in the rejection of claim 48, the area is unattached to the front portion because there is no bonding material disposed on that portion of the fastener.

Response to Arguments

Applicant's arguments filed January 30, 2004 have been fully considered but they are not persuasive.

With respect to the applicant's argument that Elsberg does not disclose or suggest each and every element of amended claim 41, the examiner refers to the preceding rejection of claim 41.

The applicant has amended the claim to recite that the first and second fault lines are configured for activation to selectively release the front portion from the rear portion for use of the personal care absorbent article as a diaper-like article, or to remain intact for use of the personal care absorbent article as a pant-like structure.

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The examiner contends that Elsberg allows the article to perform the latter (i.e., remain intact for use of the personal care absorbent article as a pant-like structure. Elsberg discloses in col. 18, lines 42 – 47 that the secondary fastener is not arranged until after the prefastened diaper is pulled on the wearer, thereby allowing the secondary fastener to remain intact for use of the article as a pant-like structure.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**.

See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 703-305-2941. The examiner can normally be reached on Monday - Friday, 7:30am - 4:00pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on 703-305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Michele Kidwell
April 12, 2004


JOHN CALVERT
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700